Yeo Ah Tee v Lee Yong Heng & Ors

HIGH COURT (JOHORE BAHRU) — CIVIL SUIT NO 22-93 OF 1989
LC VOHRAH J
8 OCTOBER 1992

Civil Procedure *— Bill of costs — Taxing — Getting-up fee — Bill of costs in respect of getting-up fee for dismissal of application for interlocutory injunction awarded — Application for leave to withdraw the whole suit subsequently granted — Costs for getting-up fee of the case in defending the suit allowed — Whether second getting-up fee should have been allowed*

The plaintiff's application for an interlocutory injunction against the defendants was dismissed in 1989. The bill of costs relating to this application for the injunction was taxed by the senior assistant registrar and an appeal was lodged against the amount allowed for the getting-up fee. The appeal was allowed and the getting-up fee was reduced. In 1991, the plaintiff's application to withdraw the whole suit against the first, second and third defendants was allowed. In the taxing of these costs, the senior assistant registrar allowed the sum of RM5,000 for the getting-up of the case in defending the suit. The plaintiff appealed on the ground that since one getting-up fee has already been allowed to the defendants in respect of the unsuccessful application for an interlocutory injunction, there ought in principle, not be another getting-up fee in respect of the action which was withdrawn.

Held, dismissing the appeal:
In the case of *Lee Bang v Nadzri*,[1] it was held that a getting-up fee could not be charged twice, once for getting-up on the motion, and again for getting-up the case generally. That case did not lay down a rule to the effect that once a getting-up fee has been allowed the defendant in defending an interlocutory application for a limited remedy, such as an interim injunction in an action, that allowance ipso facto bars the successful defendant from claiming a separate getting-up fee in respect of the suit proper which may have prayers for several remedies. In this case, the statement of claim alleged fraud, which required a consideration of the law in this respect. Much more work had been done for the defence of the action generally than for the defence of the application for the interlocutory injunction.

[Bahasa Malaysia summary

Permohonan plaintif untuk injunksi interlokutori terhadap defendan telah ditolak dalam tahun 1989. Bil kos yang berkaitan dengan permohonan untuk injunksi ini telah ditetapkan oleh penolong kanan pendaftar dan suatu rayuan telah dibuat terhadap jumlah yang dibenarkan untuk bayaran penyediaan guaman. Rayuan itu telah dibenarkan dan bayaran penyediaan guaman telah dikurangkan.

Dalam tahun 1991, permohonan plaintif untuk menarik balik seluruh guaman terhadap defendan pertama, kedua dan ketiga telah dibenarkan. Apabila menetapkan kos ini, penolong kanan pendaftar telah membenarkan jumlah sebanyak RM5,000 untuk penyediaan guaman kes itu apabila membela guaman itu.

Plaintif telah merayu atas alasan bahawa memandangkan suatu bayaran penyediaan guaman telah dibenarkan kepada defendan berkaitan dengan permohonan yang telah gagal untuk suatu injunksi interlokutori, sepatutnya secara prinsip, tidak terdapat suatu lagi bayaran penyediaan guaman dari segi tindakan yang telah ditarik balik.

Diputuskan, menolak rayuan itu:

(1) Di dalam kes *Lee Bang v Nadzri*,[1] telah diputuskan bahawa bayaran penyediaan guaman tidak boleh dikenakan bayaran dua kali, sekali untuk penyediaan guaman atas usul dan sekali lagi untuk penyediaan guaman kes itu secara am. Kes itu tidak menetapkan suatu peraturan yang mensyaratkan bahawa sebaik sahaja bayaran penyediaan guaman dibenarkan, defendant apabila membela suatu permohonan interlokutori untuk remedi terhad, seperti suatu injunksi interim dalam suatu guaman, keizinan itu ipso facto menghalang defendan yang berjaya dari menuntut bayaran penyediaan guaman yang berasingan dari segi guaman sebenarnya yang mungkin mempunyai pohonan untuk beberapa remedi. Di dalam kes ini, pernyataan tuntutan menuduh fraud. Suatu pertimbangan undang-undang dari segi ini diperlukan. Lebih banyak kerja perlu dibuat untuk membela guaman itu secara am berbanding dengan untuk membela permohonan untuk injunksi interlokutori.]

Case referred to

1 *Lee Bang v Nadzri* [1965] 2 MLJ 186 (distd)

Gana Muthusamy (*Gana Muthusamy & Co*) for the plaintiff.
KT Tan (*Tan & Tan*) for the defendants.

Cur Adv Vult

LC Vohrah J: On 14 May 1989 VC George J dismissed with costs the plaintiff's application for an interlocutory injunction to restrain the defendants from dealing with a piece of land which was the subject matter of the suit. The bill of costs relating to this application for the injunction was taxed by the senior assistant registrar and an appeal was lodged against the amount allowed by the senior assistant registrar for the getting-up fee in respect of this application and the appeal was allowed on 6 August 1990 when the learned judge reduced the amount from RM6,000 to RM3,500.

On 8 January 1991, I granted an order in terms of the plaintiff's application for leave to withdraw the whole suit against the first, second and third defendants and made an order specifically for costs of the suit to be paid to the three defendants. In the taxing of these costs, the senior assistant

registrar allowed the sum of RM5,000 for the getting-up of the case in defending the suit.

It is the contention of counsel for the plaintiff that since one getting-up fee had already been allowed to the defendants in respect of their unsuccessful application for an interlocutory injunction there ought in principle not be another getting-up fee in respect of the action which was withdrawn. Of the two cases cited by counsel in support of his contention, I find only the case of *Lee Bang v Nadzri*[1] of any real relevance for the purposes of this appeal. The facts of that case were that on 6 April 1964, the plaintiff filed a writ in the High Court at Ipoh against the defendant, claiming damages for personal injuries arising out of a motor accident. The writ was duly served and the defendant failing to enter appearance, the plaintiff took out a motion for judgment in default of appearance returnable on 20 July 1964. The defendant entered appearance on 16 July 1964 and paid RM4,000 into court in satisfaction of the plaintiff's claim. Consequently, when the motion came up for hearing on 20 July 1964, an order was made on the motion but the court ordered that the costs be costs in the cause. On the taxing of the plaintiff's bill of costs under the earlier Rules of the Supreme Court 1957, the senior assistant registrar disallowed the claim for RM500 for getting-up in respect of the motion for judgment and also the claim for RM850 for getting-up generally. On appeal to the judge-in-chambers, it was held that a getting-up fee could not be charged twice, once for getting-up on the motion and again, for getting-up the case generally and the case was remitted to the senior assistant registrar to assess the getting-up fee for the case generally. The learned judge on the facts of the case, did not interfere with the decision of the senior assistant registrar disallowing the fee for getting-up the motion under item 37 on the ground that a getting-up fee could not be charged twice, once under item 37 for getting-up the motion and again under item 40 for getting-up the case generally, since all the getting-up that the plaintiff's solicitors were obliged to do on default of an entry of appearance was to procure the necessary evidence, attend upon witnesses and consider the law in order to assist the court to assess the quantum of general damages. Besides, in an action for damages for personal injury, the plaintiff's solicitors would have perforce to consider the facts and law to determine whether the action should be brought in the High Court or a subordinate court and the costs thus incurred could not be charged for work done in connection with a motion. The learned judge in that case had occasion then to re-affirm the principle that where proceedings in an action have reached a stage when a hearing in open court is inevitable, the solicitors of the parties are entitled to be in readiness for the hearing and must be compensated for the work done irrespective of whether there was actually a hearing in open court or not. That case did not lay down a rule to the effect that once a getting-up fee has been allowed, the defendants in defending an interlocutory application for a limited remedy, such as an interim injunction in an action, that allowance ipso facto bars the successful defendant from claiming a separate getting-up fee in respect of the suit proper which may have prayers for several remedies. In the present appeal, the statement of claim, apart from asking for the injunction, prayed for a declaration that an order granted by the court in an earlier action was

null and void on the ground, inter alia, of fraud, a prayer which required consideration of the law in respect of fraud and not only of that confined to injunctions. I think it was proper for the senior assistant registrar to have allowed a separate getting-up for the action generally, as was specifically ordered by me when I granted leave for the suit to be withdrawn because I was of the considered opinion that much more work had been done for the defence of the action generally than for the defence of the particular application for the interlocutory injunction. This application for review is accordingly dismissed with costs.

Application dismissed.

Reported by Zarinah Marican